



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/276,207	03/25/1999	WILLIAM CARTER CARROLL BULLARD	10360/009001	1809

27820 7590 09/23/2004

WITHROW & TERRANOVA, P.L.L.C.

P.O. BOX 1287

CARY, NC 27512

EXAMINER

KARMIS, STEFANOS

ART UNIT

PAPER NUMBER

3624

DATE MAILED: 09/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/276,207

Applicant(s)

CARROLL BULLARD, WILLIAM  
CARTER

Examiner

Stefano Karmis

Art Unit

3624

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 July 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

1. The following communication is in response to Applicant's amendment filed the 08 July 2004.

### ***Status of Claims***

2. Claims 1, 7, 11 and 21 are presently amended. Claims 2-6 and 12-20 are previously presented. Claims 8-10 are left as originally filed. Therefore claims 1-21 are under prosecution in this application.

### ***Summary of this Office Action***

3. Applicant's arguments filed 08 July 2004 have been fully considered but they are not persuasive. Response to the arguments is discussed below. Therefore claims 1-21 stand rejected as stated in the previous office action, mailed 08 April 2004, and Applicants request for allowance is respectfully denied.

***Response to Arguments***

4. Claims 1-4, 6-9, 11-15, 17-19 and 21 stand rejected under 35 U.S.C. 102(e) as being anticipated by Gallant et al. (hereinafter Gallant) U.S. Patent 5,802,468 as stated in the office action mailed 08 April 2004.

5. Applicant has amended claim 1, to recite a computer implemented method comprising providing a computer network subscriber with a networking transmission service having a first characteristic related to a quality of service associated with the networking transmission service. Applicant asserts that Gallant fails to be concerned with billing based on quality of service. The Examiner respectfully disagrees, Gallant teaches a subscriber who is billed for service used in a particular service area. Gallant further states that the service areas are determined on the basis of providing quality of service (column 6, lines 49-59). Therefore quality of service is a basis in billing the subscriber. The Examiner believes the teachings of Gallant to be sufficient, however the Examiner has included the teachings of alternate prior art to provide further evidence with respect to billing based on quality of service.

Rahman U.S. Patent 6,445,916 teaches a wireless system and method for evaluating quality of service in which quality of service is a factor for providing billing to a subscriber (column 7, lines 1-14). It would be obvious to anyone of ordinary skill in the art that the teachings of Gallant could include the teachings of Rahman for quality of service billing because both provide billing for use of service over a network and it provides an efficient and measurable parameter for determining billing amount based on criteria subscribers place importance upon.

Independent claims 11 and 21 are amended in a similar fashion and therefore the rejection follows as stated above for those claims.

6. Continuing Applicant contests that the Gallant is concerned with telephone networks and not computer networks. The Examiner respectfully disagrees, Gallant discloses a computer connected to the network for tracking tariffs and further discloses that computer system can be located elsewhere in the mobile communication system or in the public switched telephone network (column 6, lines 30-35 and Figure 1). Therefore Gallant does teach a computer network and the rejection stands as stated.

7. Regarding the Official Notice stance taken by the Examiner with respect to claims 5 and 16 in which the Examiner states that determining packet loss in a computer network environment is old and well known in the art, the Examiner has provided prior art evidence to support the rejection. Chen et al, U.S. Patent 5,793,976 teaches a method and apparatus for performance monitoring in electronic communications networks including determining packet loss in a computer networking (column 4, lines 40-56).

8. Regarding the Official Notice stance taken by the Examiner with respect to claims 10 and 20 in which the Examiner states that accounting policies in a computer network is old and well known in the art, the Examiner has provided prior art evidence to support the rejection. Melen et al. U.S. Patent 5,956,391 teaches billing in the Internet, which includes accounting policies performed on a computer network (Abstract).

9. Therefore, the Examiner has fully responded to Applicant's amendment and claims 1-21 stand rejected as stated in the previous office action, mailed 08 April 2004, and Applicants request for allowance is respectfully denied.

***Conclusion***

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

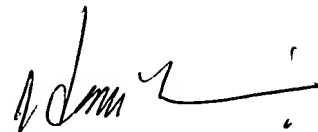
11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stefano Karmis whose telephone number is (703) 305-8130. The examiner can normally be reached on M-F: 8-5.

Art Unit: 3624

12. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on (703) 308-1065. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Respectfully Submitted  
Stefano Karmis  
15 September 2004



**HANI M. KAZIMI**  
**PRIMARY EXAMINER**